IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1661 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARISHBHAI MASABHAI CHAUDHARI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1661 of 2004

MR SHAKEEL A QURESHI for Petitioner No. 1

MS ARCHANA RAVAL, A.G.P. for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/06/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenu has challenged his detention order dated 19-12-2003, by

which he is detained under P.A.S.A. as a " bootlegger". Alongwith the said order, the petitioner is served with the grounds of detention. In the grounds of detention there is a reference of two registered criminal cases pending against the petitioner under the Bombay Prohibition Act, however, no statement of any witness is recorded by the authority. The detaining authority after considering the material on record has passed the order of detention.

2. Learned Advocate for the petitioner submitted that the last incident against the petitioner was of 22-9-2003, and after considerable time of almost three months from the last date of registered offence, the order of detention was passed on 19-12-2003. It is submitted that when the authority has also not taken the statement of any witnesses and this fact was within the knowledge of the detaining authority, it is not necessary to wait for almost three months in passing the detention order. In order to substantiate his say he has relied on the decision of this Court in the case of Thakor Girishji Alias Gidhaji Jenaji V. District Magistrate and Ors. reported in (2002 (1) GCD 338 (Guj) wherein at paragraph 7, it has been observed as under:

> "Looking to the facts of the present case, there is delay of more than two months in passing the detention order from the last date of registered offence and such delay admittedly remains unexplained in absence of reply and there was no immediate danger or requirement or there was no justification for immediate proximity or nexus to pass detention order. It is pertinent to note that no affidavit in reply has been filed by the respondents therefore, the order of detention is required to be quashed and set aside."

3. This point has been taken up by the petitioner in this petition. The same is not denied by the respondents by filing any reply. Therefore, the statement made in the petition is required to be accepted as there is no explanation regarding such delay. Even otherwise, no statement of any witness is recorded by the authority. Therefore, there was no reason for the authority to wait for almost three months from the occurrence of last incident in passing the detention order.

4. Learned A.G.P. Ms. Archana Raval, however, submitted that the delay has occasioned as the concerned District Magistrate was transferred at the relevant time and though the parawise remarks have already been

prepared, the concerned Incharge District Magistrate had no powers to pass the order of detention. In any case this explanation is required to be placed on proper affidavit. Since no affidavit-in-reply has been filed, and since the matter was adjourned to today, with an understanding that the matter will be heard finally today, ultimately, now, the matter is required to be decided in absence of any such affidavit-in-reply.

5. In the instant case, unfortunately, no affidavit in reply has been filed by the authority explaining the delay in passing the detention order after the occurrence of last so called incident. Therefore, the averment made in the petition in this regard is not controverted by the authority. Under these circumstances, there is no other alternative but to set aside the order of detention on the ground of delay in passing the detention order from the date of incident.

6. For the foregoing reasons, this petition is allowed. The order of detention dated 19-12-2003 passed by the respondent no.2 against the petitioner is ordered to be quashed and set aside. Detenu, Harishbhai Masabhai Chaudhary, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(P.B.Majmudar,J.)

stanley-pbm.